IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10749 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHEMABHAI S PARMAR(deceased through heirs & LRs.)

Versus

MOHANLAL A.BHATT(deceased through heirs & LRs.)

Appearance:

1. Special Civil Application No. 10749 of 1994

MR GIRISH D BHATT for Petitioner No. 1

MR HM PARIKH for Respondent No. 1

..... for Respondent No. 2-7

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/04/2004

ORAL JUDGEMENT

The present Special Civil Application is filed under Article 227 of the Constitution of India challenging the judgment and order dated 22.6.1993 passed by the Gujarat Revenue Tribunal in Revision Application

No. TEN.BA 70/1992 in dismissing the same and confirming the order passed by the Dy. Collector (Land Reforms), Appeals, Kheda dated 15th November 1991 passed in Tenancy Appeal No. 380/1990 and also the order passed by the Mamlatdar and ALT, Nadiad dated 30th July 1990 by which the application submitted by the original petitioner under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act (hereafter referred to as 'the Act') has been dismissed for default.

2. That original applicant, Bhemabhai SHivabhai Parmar has filed an application before the Mamlatdar and ALT, Nadiad on 1.8.1988 under Sec. 70(b) r/w.32-G of the Act for declaring him as tenant with regard to land in question. That it seems the hearing of the said application was fixed by the Mamlatdar and ALT, Nadiad on 12th April 1990. However, as the original-applicant did not remain present on that day, the Mamlatdar & ALT, Nadiad vide order dated 18th May 1990 dismissed the said application being Tenancy Case No. 232 of 1988 as the original-applicant did not remain present. That it seems that thereafter as soon as the original-applicant came to know about the said order he moved an application on 13th July 1990 for restoring the aforesaid case to file and to quash and set aside the order dated 18th May 1990. That Mamlatdar & ALT, Nadiad, dismissed the said application for restoration by order dated 13th July 1990 by holding that the reason given by the original-applicant for restoration is not germane and is not a sufficient reason for restoration of the application.

3. Being aggrieved by the order of the Mamlatdar & ALT dated 13th July 1990 and also the original order dated 18th May 1990 passed in Tenancy Case No. 232/1988 the original applicant preferred Tenancy Appeal No. 380 of 1990 before the Dy. Collector (Land Reforms), Appeals, Kheda which also came to be dismissed by order dated 15th November 1991.

4. Being aggrieved by the order passed by the Dy. Collector (Land Reforms), Appeals, Kheda dated 15th November 1991, the original applicant preferred Revision Application No. TEN.BA No. 70/92 before the Gujarat Revenue Tribunal, Ahmedabad. The Tribunal also dismissed the said revision application by judgment and order dated 22.6.1993 confirming the order passed by both the authorities below. The aforesaid judgment and order passed by the Tribunal had given rise to the present Special Civil Application under Art. 227 of the Constitution of India.

5. Shri G.D. Bhatt, ld. advocate appearing on behalf of the petitioner had submitted that all the authorities below have taken too technical stand in not restoring the matter. It is further submitted by him that earlier the original applicant had remained present before the authority but on 12th April 1990 in view of the fact that he was sick he could not remain present and though he had engaged a Lawyer for some reason the Advocate also did not remain present and therefore an order came to be passed dismissing the aforesaid tenancy case. It is further submitted by Shri Bhatt that normally a case is required to be decided and disposed of on merits and normally on technical grounds the rights of a party should not be defeated and therefore requested to quash and set aside the order passed by all the authorities below and to remand the matter to the Mamlatdar & ALT for deciding the aforesaid tenancy case on merits.

6. Shri H.M. Parikh, ld. advocate appearing for the respondent had opposed the present Special Civil Application and tried to support the orders passed by all the authorities below. Mr. Parikh has submitted that in view of the fact that concurrent findings are given by all the authorities below this Court should not interfere with the same exercising power under Article 227 of the Constitution of India. It is also further submitted that in view of the fact that original-applicant did not remain present on the day on which hearing was fixed the Mamlatdar was justified in dismissing the said application in absence of the original-applicant.

7. I have heard the learned advocates appearing for the parties. It is true that on the day on which the application was placed for hearing before the Mamlatdar neither the original-applicant nor his advocate remained present. However, nothing is on record to suggest as to how many times the applicant and/or their advocate had remained absent. It is true that on 12th April 1990 the day on which the hearing was fixed neither the applicant nor his advocate remained present, but only on that ground the Mamlatdar & ALT has dismissed the application filed under Section 70(b) of the Act. As held by the Hon'ble Supreme Court of India as well as this Court in catena of decisions, normally the rights of parties should not be defeated on technical ground and authority has to see that as far as possible the matter is decided and disposed of on merits of the case. This aspect has not been considered by all the authorities below. In view of the fact that the right of the original-applicant who has moved the application under Section 70(b) of the

Act is defeated on technical ground of remaining absent on one day, according to me one chance should have been given by the authority, and under the circumstances the impugned orders passed by all the authorities below are required to be quashed and set aside and accordingly the judgment and order passed by the Gujarat Revenue Tribunal dated 22.6.1993 in Revision Application No. TEN.BA 70/1992, the order passed by the Dy. Collector (Land Reforms), Appeals, Kheda dated 15th November 1991 in Tenancy Appeal No. 380 of 1990, the order passed by the Mamlatdar & ALT dated 13th July 1990, and also the order passed by the Mamlatdar & ALT dated 18th May 1990 passed in Tenancy Case No. 232 of 1988 are hereby quashed and set aside. The matter is remanded to the Mamlatdar & ALT, Nadiad to decide and dispose of the Tenancy Case No. 232 of 1988 on merits, after giving an opportunity to all the concerned parties. It is clarified that assurance is also given by both the learned advocates appearing for the parties that they will cooperate in disposal of the aforesaid Tenancy Case No. 232/1988. In view of the fact that the original order is of 1988 the Mamlatdar & ALT, Nadiad, is directed to dispose of the said tenancy case within a period of 6 months from the date of receipt of writ of this Court.

8. In view of the fact that the respondents are required to defend this proceedings because of fault on the part of original-applicant, it will be just and proper to impose some costs. Accordingly, the petitioners are directed to pay an amount of Rs. 1,000/= to the respondents within a period of 3 months from the date of receipt of this order. It is made clear that if the amount is not paid to the respondents, then the Mamlatdar and ALT need not hear the aforesaid Tenancy Case No. 232 of 1988 on merits. The petition is allowed accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]